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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CLRB HANSON INDUSTRIES, LLC d/b/a)	CASE NO: C05-03649 JW
INDUSTRIAL PRINTING, and HOWARD)	
STERN, on behalf of themselves and all)	DECLARATION OF MICHELE F.
others similarly situated,)	RAPHAEL IN OPPOSITION TO
)	DEFENDANT GOOGLE INC.'S
Plaintiffs,)	ADMINISTRATIVE MOTION FOR
)	LEAVE TO FILE DOCUMENTS
vs.)	UNDER SEAL IN CONNECTION WITH
)	GOOGLE INC.'S REPLY TO
GOOGLE, INC.,)	PLAINTIFFS' SUPPLEMENTAL
)	OPPOSITION TO GOOGLE INC.'S
Defendant.)	MOTION FOR SUMMARY JUDGMENT
)	
)	Civ. L.R. 7-11
)	Civ. L.R. 79-5
)	Courtroom: 8
)	Judge: Hon. James W. Ware

RAPHAEL DECLARATION IN OPPOSITION TO DEFENDANT'S MOTION TO FILE DOCUMENTS UNDER SEAL IN CONNECTION WITH GOOGLE INC.'S SUPPLEMENTAL REPLY

1 I, **MICHELE F. RAPHAEL**, declare as follow:

2 1. I am a member of Wolf Popper LLP, counsel for Plaintiffs CLRB Hanson
3 Industries, LLC d/b/a Industrial Printing and Howard Stern (collectively, "Plaintiffs") in this
4 action against Google, Inc ("Google"). I have personal knowledge of the facts stated herein. I
5 submit this declaration in opposition to Defendant Google Inc.'s Administrative Motion for
6 Leave to File Documents Under Seal in Connection with Google Inc.'s Reply to Plaintiffs'
7 Supplemental Opposition to Google Inc.'s Motion for Summary Judgment.

8 2. Defendant seeks to file Google Inc.'s Reply to Plaintiffs' Supplemental
9 Opposition to Google Inc.'s Motion for Summary Judgment ("Defs. Supp. Reply Mem.")
10 entirely under seal and Exhibits A, B and C to the Supplemental Declaration of M. Christopher
11 Jhang in Support of Google Inc.'s Reply to Plaintiffs' Supplemental Opposition to Google Inc.'s
12 Motion for Summary Judgment ("Supp. Reply Jhang Decl.") (collectively, "Defs. Supp. Reply
13 Filings") under seal, largely because said document and those documents contain, or refer to the
14 deposition transcripts of Messrs. Schulman and Venkataraman which Defendant has improperly
15 designated as confidential in their entirety.

16 3. Plaintiffs have objected to Defendant's blanket designation of the transcripts of
17 Messrs. Schulman and Venkataraman as improper and contrary to the Protective Order entered
18 on May 15, 2007. Paragraph 4 thereof explicitly prohibits blanket, en masse designations
19 without regard to the specific contents of each document or piece of information. Illustrative of
20 the impropriety of Defendant's blanket confidential designation is that testimony of the
21 witnesses concerning their preparation for their deposition, whether they were asked to provide
22 documents with respect to this case, their educational background, their employment history,
23 their titles and physical location of their offices at Google, and questions concerning Ms.
24 Schulman's Declaration which was publicly filed, have all been marked confidential. This is
25 just illustrative, and not an exhaustive reiteration of the testimony that has been improperly
26 designated confidential. Plaintiffs have requested that Defendant provide good faith
27 designations. Nevertheless, as of this time the documents are still designated confidential in

28 **RAPHAEL DECLARATION IN OPPOSITION TO DEFENDANT'S MOTION TO FILE DOCUMENTS UNDER SEAL IN
CONNECTION WITH GOOGLE INC.'S SUPPLEMENTAL REPLY**

1 their entirety.

2 4. Defendant has failed to demonstrate good cause to justify the filing of the
3 aforementioned documents completely under seal. Little, if any, information qualifies as
4 confidential material as per the Protective Order. For example, Defs. Supp. Reply Mem.
5 discusses/argues what the sign-up process was when Plaintiffs' enrolled and whether the terms
6 of the purported Adwords Agreement excludes paused days from the calculation of daily budget
7 times the number of days in a month. Indeed, much of the brief concerns the publicly available
8 Frequently Asked Questions ("FAQs"). There is little (if anything), in Defs. Supp. Reply Mem.
9 which may be properly withheld from the public record.

10 5. The same holds true for the exhibits to the Supp. Reply Jhang Decl. which
11 Defendant wants to keep from the public. Exhibit B and C are excerpts from the transcript of
12 Messrs. Schulman and Venkataraman which have been improperly designated as confidential in
13 their entirety.

14 6. Defendant has not shown that the material it seeks to file under seal contains
15 confidential material as per the Protective Order nor Fed. R Civ. Pro. 26. Defendant's request to
16 file under seal the excerpts from the deposition transcript of Ms. Wilburn, Exhibit A, is
17 extremely troubling. Few lines therein were even designated by Defendant as confidential. To
18 the extent Defendant deems those lines of testimony necessary to submit to the Court (whether
19 properly designated or not) they should be redacted.

20 7. Defendant should make a good faith effort to designate as confidential only those
21 portions of Defs. Supp. Reply Mem. and only those exhibits, or portions of exhibits, annexed to
22 the Supp. Reply Jhang Decl. which properly qualify as confidential pursuant to the Protective
23 Order and Fed. R. Civ. Pro. 26 (c). Then, if, and to the extent, Defendant continues to maintain
24 that it is necessary to file under seal any portion of Defs. Supp. Reply Filings, such request
25 should be narrowly tailored to keep from the public record only those portions which constitute
26 trade secrets, proprietary information, and/or confidential information, which, if not sealed and
27

1 permitted in the public record, would prejudice Google or cause Google to suffer irreparable
2 harm.

3
4 Dated: May 30, 2007

5
6 /s/
Michele F. Raphael